Local 735, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO *and* Rainell Nordquist-Goddard and General Motors Corporation, Party in Interest. Case 7–CB–9208

April 12, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

Upon a charge filed by Rainell Nordquist-Goddard, an individual, the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing on June 15, 1992, against Local 735, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, the Respondent, alleging that it has violated Section 8(b)(1)(A) and (2) of the National Labor Relations Act. Although properly served copies of the charge and consolidated complaint, the Respondent has failed to file an answer.

On March 15, 1993, the General Counsel filed a Motion for Summary Judgment. On March 18, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The consolidated complaint states that unless an answer is filed within 14 days of service, ''all the allegations in the consolidated complaint shall be considered to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 16, 1992, notified the Respondent that unless an answer was received by December 21, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, General Motors Corporation, a corporation, has been engaged at its Powertrain plant located in Ypsilanti, Michigan, in the manufacture and nonretail sale of automobiles and trucks. During the calendar year 1991, the Employer had gross revenues in excess of $1 million and purchased and received at its Powertrain plant goods valued in excess of $50,000 directly from points outside the State of Michigan. We find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the International) has been and is now the exclusive representative for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment, of a nationwide unit of production and maintenance employees employed by the Employer at various facilities in various States of the United States.

The Respondent, a duly constituted/chartered local of the International, and acting as agent of the International, represents certain employees, including the Charging Party, in the collective-bargaining unit who are employed by the Employer at its Powertrain plant in Ypsilanti, Michigan. The International and the Employer have maintained in effect and enforced a collective-bargaining agreement covering wages, hours, and other terms and conditions of employment of the employees in the bargaining unit.

On or about April 27, 1992, the Respondent requested that the Employer remove the Charging Party from her quality assessment liaison position. The Respondent made this request in order to prevent the Charging Party from engaging in internal union campaigning for a position in the Respondent and to discourage employees from engaging in these activities. The Respondent's action was an attempt to cause and did cause the Employer to discriminate against its employees in violation of Section 8(a)(3).

[1] The General Counsel consolidated the instant case with Case 7–CA–33263. Thus, in addition to the allegations decided here, the consolidated complaint also alleges that the Employer General Motors Corporation violated Sec. 8(a)(1) and (3) of the Act by removing the Charging Party from her quality assessment liaison position at the behest of the Respondent in order to discourage employees from engaging in internal union campaigning. On February 10, 1993, the Regional Director for Region 7 issued an order severing cases and postponing trial indefinitely.

CONCLUSION OF LAW

By requesting that the Employer remove the Charging Party from her quality assessment liaison position in order to prevent the Charging Party from engaging in campaigning for a position in the Respondent and in an attempt to cause and causing the Employer to discriminate against its employees in violation of Section 8(a)(3), the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we shall order the Respondent to notify the Employer in writing, with a copy to the Charging Party and a copy to the Regional Director for Region 7 of the National Labor Relations Board, that it has no objection to the employment of the Charging Party as quality assessment liaison and simultaneously request that the Employer reinstate the Charging Party to her former position of quality assessment liaison with all seniority and other benefits attendant thereto. We shall also order that the Respondent request the Employer to expunge all references to the unlawful removal from the personnel file of the Charging Party. We shall also order the Respondent to make the Charging Party whole for any loss of wages and benefits suffered from the date of her removal until the date of her reinstatement to her former job or, if that job no longer exists, to an equivalent job as set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950), or *Ogle Protection Service*, 183 NLRB 682, 683 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), whichever is applicable, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[2] Should the Employer be found to have violated Section 8(a)(1) and (3) as alleged in the consolidated complaint allegations in Case 7–CA–33263, the Respondent shall be jointly and severally liable with the Employer for all amounts due and owing to the Charging Party unless a different apportionment is set forth in supplemental or other proceedings.[3] Finally, we shall order that the Respondent post the attached notice.

ORDER

The National Labor Relations Board orders that the Respondent, Local 735, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Requesting that the Employer remove the Charging Party or any other employee in order to prevent her from engaging in campaigning for a position in the Respondent Union and in an attempt to cause and causing an employer to discriminate against her (or any other employee) in violation of Section 8(a)(3) of the Act.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify the Employer in writing, with a copy to the Regional Director for Region 7 of the National Labor Relations Board and a copy to the Charging Party, that the Respondent has no objection to the employment of the Charging Party as quality assessment liaison and simultaneously request in writing that the Employer reinstate the Charging Party to her former position of quality assessment liaison with all seniority and other benefits attendant thereto and further request that all reference to the Charging Party's removal be expunged from her personnel file.

(b) Make the Charging Party whole in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all others records necessary to analyze the amounts due under the terms of this Order.

(d) Post at its facility in Ypsilanti, Michigan, copies of the attached notice marked ''Appendix.''[4] Copies of

[2] Should the Charging Party be found to have suffered any loss of benefits, the Respondent shall make her whole by making all payments that have not been made and that would have been made but for the Respondent's unlawful request that the Charging Party be transferred, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co*., 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse the Charging Party for any expenses ensuing from its request that she be transferred which caused a failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

[3] See, e.g., *Printing Pressmen Local 16 (Bulletin Co.)*, 181 NLRB 647 (1970), enfd. 443 F.2d 863 (3d Cir. 1971), cert. denied 404 U.S. 1018 (1972) (where employer strongly resisted union's unlawful demands, acted in good faith, and was vulnerable to union pressure, the union was held primarily liable and the employer only secondarily liable). See also *Alberici-Fruin-Colnon*, 226 NLRB 1315 (1976), enfd. sub nom. *NLRB v. Laborers Local 282*, 567 F.2d 833 (8th Cir. 1977).

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT request that General Motors Corporation remove Rainell Nordquist-Goddard (or any other employee) from her position as quality assessment liaison to prevent her (or any other employee) from campaigning for a union position or in an attempt to cause and causing General Motors Corporation to discriminate against its employees in order to discourage their union activity in violation of Section 8(a)(3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify General Motors Corporation in writing, with a copy to Rainell Nordquist-Goddard and a copy to the Regional Director for Region 7 of the National Labor Relations Board, that we have no objection to the employment of Rainell Nordquist-Goddard as quality assessment liaison and WE WILL simultaneously request that General Motors Corporation return Rainell Nordquist-Goddard to her position as quality assessment liaison with full seniority and all attendant benefits and that her personnel records be expunged of all mention of her removal.

WE WILL make Rainell Nordquist-Goddard whole, with interest, for any losses of wages or benefits caused by our unlawful request that she be removed from her position.

LOCAL 735, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL–CIO